IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 9456 of 2001

Between:

M/s. Kingsway Auto Service Station,

rep., by its Proprietor, Brijgopal Fathapuria,
S/o Pannalal Dealer in H.P.C Ltd., R/o Secunderabad.
Plot.No. 5-3-338, R.P.Road, Secunderabad.

..... PETITIONER

AND

1 The Commissioner of Municipal Corporation,

Hyderabad.
2 The Chief City Planner,

Town Planning Section,

Head Office M.C.H,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate Writ order or direction or a Writ more particularly a Writ in the nature of Mandamus by declaring the Proceedings No. 259/TP7/ CCP/2000-1412, dated 28-11-2000 received by the petitioner on 11-5-2001 issued by the 2nd respondent herein is illegal void and without jurisdiction and permitting the petitioner to continue business in the renovation premises without demolishing the same.

Counsel for the Petitioner: Mr. G.DHARMA RAO

Counsel for the Respondent No.1: GP FOR MUNCIPAL ADMN. & URBAN DEV.

Counsel for the Respondent No.2: Smt. JYOTHI KIRAN.

The Court, at the stage of admission, made the following:

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Mandamus declaring the action of the 2nd respondent-Chief City Planner, Town Planning Section, Municipal Corporation of Hyderabad, Hyderabad, in issuing proceedings No.259/TP7/CCP/2000-1412, dated 28-11-2000, as illegal and arbitrary.

2. The petitioner is the dealer in Hindustan Petroleum Corporation having retail petroleum out let.

3. In the affidavit, filed in support of the writ petition, it is stated that the land, in question, is a Government land and the same was leased out to one Smt.R.Vani Bai for a period of thirty years. The lessee-Vani Bai again leased out the said land to the petitioner, who is the proprietor of M/s Kingsway Auto Service Station, situated at Plot No.5-3-338, R.P.Road, Secunderabad, as a sub-lessee. Since the further lease period was not renewed, the petitioner filed W.P.No.2259 of 1999 before this Court and the same was dismissed. Challenging the said order of dismissal, the petitioner preferred an appeal before this Court in W.A.No.647 of 1999, wherein this Court directed the respondents to consider and dispose of the application of the petitioner within six weeks thereof. While the matter stood thus, the petitioner filed an application on 10-10-2000 before the 2nd respondent–Chief City Planner, seeking permission for construction of a canopy and renovation works for his retail outlet. But the 2nd respondent, without assigning any reasons, rejected the said application by passing the impugned proceedings on the ground that the petitioner has not enclosed the required documents but only submitted a copy of the lease document obtained from the original lessee-Vani Bai and directed the petitioner to remove the unauthorized construction. The grievance of the petitioner is that since he did not

receive any communication from the 2nd respondent within one month from the date of his application, he proceeded with the construction and completed the same but by virtue of the impugned proceedings, the 2nd respondent proceeded with the demolition of the construction, existing for the last 35 years, which is illegal and arbitrary.

4. Heard both sides.

5. I have perused the entire material on record.

6. It is not in dispute that the petitioner made an application on 10-10-2000, before the 2nd respondent-Chief City Planner, seeking permission for renovation of works. But the 2nd respondent rejected the same on the ground that the petitioner has not enclosed the document relating to the extension of lease period in support of his ownership and even noticed that the building plans submitted by the petitioners are not tallying with the existing ground position. But as is evident, the respondents-Government did not consider the application of the petitioner for renewal of the lease period, in view of the orders passed by this Court in Writ Appeal No. 647 of 1999. Therefore, the question of filing of application for the extension of lease period does not arise.

7. Since the case of the respondents-Government is that the petitioner made unauthorized construction without obtaining necessary permission from the authorities, and in view of the orders passed by this Court, without going into the merits of the case, I deem it appropriate to direct the petitioner to submit his explanation to the impugned order passed by the 2nd respondent. On receipt of such explanation, the 2nd respondent-Chief City Planner shall pass appropriate orders, in accordance with law, within a period of two weeks from the date of receipt of the said explanation.

8. With the above observation, the Writ Petition is disposed of.

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(DHARMA RAO ELIPE,J)

20th July, 2005.

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To

1 The Commissioner of Municipal Corporation,

Hyderabad.

2 The Chief City Planner,

Town Planning Section,

Head Office M.C.H,

Hyderabad.

3 Two CCs to the GP for Municipal Admn. & Urban Development,

High Court of A.P., Hyderabad (O.U.T.).

4 Two CD copies.

*Form-NIC-OGS/WP{**MSKM**}*